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United Nations

Report of the Committee on the Rights of Persons with Disabilities

Thirteenth session
(25 March-17 April 2015)

Fourteenth session
(17 August-4 September 2015)

Fifteenth session
(29 March-21 April 2016)

Sixteenth session
(15 August-2 September 2016)

General Assembly
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Seventy-second session
Supplement No. 55 (A/72/55)

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I. Organizational and other matters

A. States parties to the Convention

1. As at 2 September 2016, the closing date of the sixteenth session of the Committee on the Rights of Persons with Disabilities, there were 166 parties to the Convention on the Rights of Persons with Disabilities and 89 States parties to its Optional Protocol. A list of the parties to the Convention and to its Optional Protocol is available on the web page of the United Nations Office of Legal Affairs.[1]

B. Meetings and sessions

2. The Committee held its thirteenth session from 25 March to 17 April 2015; its fourteenth session from 17 August to 4 September 2015; its fifteenth session from 29 March to 21 April 2016; and its sixteenth session from 15 August to 2 September 2016. The third session of the Committee's pre-sessional working group was held from 20 to 24 April 2015, its fourth session from 7 to 11 September 2015, its fifth session from 21 to 24 March 2016 and its sixth session from 5 to 9 September 2016. All the sessions and meetings of the Committee were held in Geneva.

C. Membership and attendance

3. The Committee is composed of 18 independent experts. A list of Committee members indicating the duration of their terms of office is available on the Committee's web page.[2]

D. Election of officers

4. On 25 March 2015, during the Committee's thirteenth session, the following members were elected for a term of two years:

Chair: María Soledad Cisternas Reyes (Chile)

Vice-Chair: Theresia Degener (Germany)

Vice-Chair: Diane Kingston (United Kingdom)

Vice-Chair: Silvia Judith Quan-Chang (Guatemala)

Rapporteur: Martin Mwesigwa Babu (Uganda)

E. Drafting of general comments

5. During its sixteenth session, the Committee adopted its general comments No. 3 (2016) on women and girls with disabilities (CRPD/C/GC/3) and No. 4 (2016) on the right to inclusive education (CRPD/C/GC/4). At its thirteenth session, the Committee held a half day of general discussion on the right to inclusive education. At its fifteenth session, it held a day of general discussion on the right to live independently and to be included in the community. At its fourteenth session, the Committee adopted guidelines on the right to liberty and security of persons with disabilities, pursuant to article 14 of the Convention,

[1] See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en and https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=_en.

[2] See www.ohchr.org/EN/HRBodies/CRPD/Pages/Membership.aspx.

which consist of a compilation of the recommendations issued under the general reporting procedure of the Committee on that matter.

F. Statements of the Committee

6. At its fourteenth session, the Committee adopted a statement on the inclusion of persons with disabilities in humanitarian action.[3] At its sixteenth session, it adopted a statement entitled "For a better urban future: securing inclusion of persons with disabilities in the New Urban Agenda".[4]

G. Accessibility of information

7. Captioning and International Sign interpretation were available during the Committee's public meetings. Captioning was also available in the Committee's private meetings. Hearing loops and documentation in Braille were available to members of the Committee upon request. The Committee interacted with the Human Rights Council task force on secretariat services, accessibility for persons with disabilities and use of information technology, and with the Special Envoy of the Secretary-General on Disability and Accessibility to promote accessibility across the United Nations.

H. Adoption of the report

8. At its 331st meeting, the Committee adopted its fourth biennial report to the General Assembly and the Economic and Social Council, covering its thirteenth, fourteenth, fifteenth and sixteenth sessions.

II. Methods of work

9. In accordance with General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system, the Committee decided to endorse the Guidelines against Intimidation or Reprisals (the San José Guidelines) (HRI/MC/2015/6) and the common consultation process in the adoption of general comments. The Committee decided to incorporate those elements in its methods of work.

10. Following a participatory process, at its sixteenth session, the Committee adopted guidelines on periodic reporting, including under the simplified reporting procedure (CRPD/C/3) and guidelines on independent monitoring frameworks and their participation in the work of the Committee (see CRPD/C/1/Rev.1, annex). The Committee amended rule 43 of its rules of procedure to indicate that, while members of the Committee who are citizens of a regional integration organization that is party to the Convention will not be appointed as party rapporteur, they will participate in the consideration of the report of the regional integration organization (see CRPD/C/1/Rev.1).

III. Consideration of reports submitted in accordance with article 35 of the Convention

11. The Committee adopted concluding observations on the initial reports submitted by the following States parties: Bolivia (Plurinational State of), Brazil, Chile, Colombia, Cook Islands, Croatia, Czechia, Dominican Republic, Ethiopia, Gabon, Germany, Guatemala, Italy, Kenya, Lithuania, Mauritius, Mongolia, Portugal, Qatar, Serbia, Slovakia, Thailand,

[3] Available at www.ohchr.org\EN\HRBodies\CRPD\Pages\CRPDStatements.aspx.
[4] Available at www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDStatements.aspx.

Turkmenistan, Uganda, Ukraine, United Arab Emirates and Uruguay.[5] It also adopted concluding observations on the initial report of the European Union.[6] An overview of the Committee's opinions and recommendations is included in chapter V of the present report. Bolivia (Plurinational State of), Chile, Qatar and the United Arab Emirates provided comments on the Committee's concluding observations.[7]

IV. Activities carried out under the Optional Protocol to the Convention on the Rights of Persons with Disabilities

12. During the reporting period, the Committee registered eight communications. It adopted Views with respect to five individual complaints: communications No. 9/2012, *A.F. v. Italy*, Views adopted on 27 March 2015; No. 21/2014, *F. v. Austria*, Views adopted on 21 August 2015; No. 11/2013, *Beasley v. Australia*, Views adopted on 1 April 2016; No. 13/2013, *Lockrey v. Australia*, Views adopted on 1 April 2016; and No. 7/2012, *Noble v. Australia*, Views adopted on 2 September 2016.[8] The Committee also adopted a decision of inadmissibility with respect to communication No. 12/2013, *A.M. v. Australia*, on 27 March 2015.[9] An overview of the Committee's opinions and Views is included in chapter V of the present report.

13. As regards the follow-up procedure for the implementation of the Committee's Views, the Committee discontinued the procedure in communication No. 8/2012, *X v. Argentina*, with an A assessment (measures taken largely satisfactory). As for communication No. 2/2010, *Gröninger v. Germany*, the Committee decided to discontinue the follow-up procedure with regard to the individual recommendations (A assessment on the measures adopted by the State party), but to maintain it with regard to the implementation of the general recommendations, with a C1 assessment (reply received but actions taken do not implement the Views). During the reporting period, the follow-up procedure was ongoing for communications No. 4/2011, *Bujdosó v. Hungary*, No. 1/2010, *Nyusti and Takács v. Hungary* and No. 21/2014, *F. v. Austria*.

14. The Committee conducted activities under article 6 of the Optional Protocol (inquiry procedure) with respect to two State parties to the Convention. It adopted a report with respect to one State party, which provided observations.[10]

V. Overview of the Committee's opinions, recommendations and Views

Positive measures in the implementation of the Convention

15. The Committee commended States parties for efforts to adopt a human rights-based approach to disability;[11] translating the Convention into indigenous languages;[12] efforts to

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[5] CRPD/C/BOL/CO/1; CRPD/C/BRA/CO/1; CRPD/C/CHL/CO/1; CRPD/C/COL/CO/1; CRPD/C/COK/CO/1; CRPD/C/HRV/CO/1; CRPD/C/CZE/CO/1; CRPD/C/DOM/CO/1; CRPD/C/ETH/CO/1; CRPD/C/GAB/CO/1; CRPD/C/DEU/CO/1; CRPD/C/GTM/CO/1; CRPD/C/ITA/CO/1; CRPD/C/KEN/CO/1; CRPD/C/LTU/CO/1; CRPD/C/MUS/CO/1; CRPD/C/MNG/CO/1; CRPD/C/PRT/CO/1; CRPD/C/QAT/CO/1; CRPD/C/SRB/CO/1; CRPD/C/SVK/CO/1; CRPD/C/THA/CO/1; CRPD/C/TKM/CO/1; CRPD/C/UGA/CO/1; CRPD/C/UKR/CO/1; CRPD/C/URY/CO/1.

[6] CRPD/C/EU/CO/1.

[7] CRPD/C/BOL/CO/1/Add.1; CRPD/C/CHL/CO/1/Add.1; CRPD/C/QAT/CO/1/Add.1; CRPD/C/ARE/CO/1/Add.1.

[8] CRPD/C/13/D/9/2012; CRPD/C/14/D/21/2014; CRPD/C/15/D/11/2013; CRPD/C/15/D/13/2013; CRPD/C/16/D/7/2012.

[9] CRPD/C/13/D/12/2013.

[10] The Committee's report and the State party's observations are available at www.ohchr.org/EN/HRBodies/CRPD/Pages/InquiryProcedure.aspx.

harmonize domestic legislation with the Convention;[13] adopting national plans and development strategies on the rights of persons with disabilities;[14] giving Constitutional recognition to the rights of persons with disabilities;[15] establishing councils at the municipal level on the rights of persons with disabilities;[16] including disability as a prohibited ground of discrimination in anti-discrimination frameworks;[17] adopting national plans for the empowerment of women with disabilities;[18] adopting measures to improve accessibility;[19] amending laws to abolish guardianship;[20] establishing national plans to prevent neglect, abuse and ill-treatment of persons with disabilities;[21] officially recognizing sign language;[22] implementing inclusive education strategies;[23] taking affirmative action to promote employment for persons with disabilities;[24] ensuring that disability allowances were not affected as a result of austerity measures;[25] ratifying the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled;[26] and ratifying the Optional Protocol to the Convention.[27] The Committee commended a regional integration organization for ratifying the Convention.[28]

General principles and obligations (arts. 1-4)

16. The Committee expressed concern about the fact that national legislation retains concepts of disability and systems for the certification of disability that focus on impairment and are anchored in the medical approach to disability; the prevalence of derogatory terminology with regard to persons with disabilities in national laws; the lack of active involvement of organizations of persons with disabilities in decision-making processes affecting them; the lack of or insufficient support, including financial support, for organizations of persons with disabilities; and the absence of a national action plan for the promotion and protection of persons with disabilities. It also expressed concern about insufficient harmonization of domestic laws with the Convention and about the uneven implementation of the Convention in federal States.

17. The Committee recommended that parties to the Convention: ensure that their definitions of disability in domestic laws and the systems for the certification and assessment of disability are based on a human-rights approach to disability;[29] remove derogatory terminology from laws and statutes;[30] ensure that representative organizations of persons with disabilities are fully associated and meaningfully, transparently and regularly consulted in the design, implementation and evaluation of laws, policies and action plans that have an impact on persons with disabilities;[31] and that they are provided with independent, sufficient and continuous financial resources for that purpose;[32] develop

[11] See, for example, CRPD/C/SVK/CO/1, para. 4.
[12] See, for example, CRPD/C/COK/CO/1, para. 4.
[13] See, for example, CRPD/C/UKR/CO/1, para. 4.
[14] See, for example, CRPD/C/DEU/CO/1, para. 4.
[15] See, for example, CRPD/C/DOM/CO/1, para. 3.
[16] See, for example, CRPD/C/BRA/CO/1, para. 4.
[17] See, for example, CRPD/C/CHL/CO/1, para. 4.
[18] See, for example, CRPD/C/THA/CO/1, para. 4.
[19] See, for example, CRPD/C/CZE/CO/1, para. 4.
[20] See, for example, CRPD/C/HRV/CO/1, para. 4.
[21] See, for example, CRPD/C/PRT/CO/1, para. 4.
[22] See, for example, CRPD/C/SRB/CO/1, para. 4.
[23] See, for example, CRPD/C/ITA/CO/1, para. 4.
[24] See, for example, CRPD/C/KEN/CO/1, para. 4.
[25] See, for example, CRPD/C/HRV/CO/1, para. 4.
[26] See, for example, CRPD/C/GTM/CO/1, para. 69.
[27] See, for example, CRPD/C/GAB/CO/1, para. 4.
[28] See, for example, CRPD/C/EU/CO/1, para. 4.
[29] See, for example, CRPD/C/LTU/CO/1, para. 6; CRPD/C/ARE/CO/1, para. 8.
[30] See, for example, CRPD/C/GAB/CO/1, para. 11; CRPD/C/KEN/CO/1, para. 6.
[31] See, for example, CRPD/C/DEU/CO/1, para. 10; CRPD/C/BRA/CO/1, para. 11.
[32] See, for example, CRPD/C/HRV/CO/1, para. 6; CRPD/C/GAB/CO/1, para. 9.

actions plans for the implementation of the Convention with clear benchmarks, timelines and appropriate funding;[33] step up harmonization of legislation with the Convention;[34] and ensure that the implementation of the Convention is extended to States parties' entire territory.[35]

18. The Committee called upon States parties to ratify the Optional Protocol to the Convention.[36]

Equality and non-discrimination (art. 5)

19. The Committee expressed concern that non-discrimination laws lack an explicit prohibition of disability-based discrimination; the denial of reasonable accommodation is not recognized as a prohibited ground of discrimination; multiple and intersectional discrimination, particularly against women with disabilities, are not recognized by law; discrimination by association is not recognized in legislation; legal remedies against discrimination are not in place or are inaccessible or ineffective; affirmative action measures to tackle discrimination have not been put in place; and training on reasonable accommodation and non-discrimination is not regularly imparted.

20. The Committee recommended that States parties explicitly prohibit disability-based discrimination in their anti-discrimination legislative frameworks;[37] ensure that reasonable accommodation is recognized in law as a form of disability-based discrimination;[38] extend the application of the principle of reasonable accommodation beyond employment into all areas of life;[39] explicitly incorporate in domestic laws protection against multiple and intersectional discrimination and discrimination by association;[40] provide legal remedies and redress to victims of discrimination;[41] adopt affirmative action measures to accelerate the de facto equality of persons with disabilities;[42] and regularly train public and private actors on reasonable accommodation and non-discrimination of persons with disabilities.[43]

Women with disabilities (art. 6)

21. The Committee expressed concern about the fact that gender equality national policies and plans often lack a disability perspective and gender is not mainstreamed in disability policies; the absence of measures to address multiple and intersectional discrimination experienced by women with disabilities; the limited participation of women with disabilities in decision-making processes affecting them; widespread harmful stereotypes affecting the enjoyment of their rights; a lack of or insufficient measures to prevent and address violence against women with disabilities, including sexual violence; a lack of data; inexistent or limited affirmative action measures; a lack of appropriate remedies against gender-based violence; and the heightened vulnerability of women with disabilities in disasters or humanitarian emergencies, exposing them to higher risks of violence, including sexual violence.

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[33] See, for example, CRPD/C/DEU/CO/1, para. 8; CRPD/C/PRT/CO/1, para. 12.

[34] See, for example, CRPD/C/TKM/CO/1, para. 8; CRPD/C/EU/CO/1, para. 9.

[35] See, for example, CRPD/C/DEU/CO/1, para. 6. See also CRPD/C/3, para. 6 (j).

[36] See, for example, CRPD/C/QAT/CO/1, para. 6; CRPD/C/THA/CO/1, para. 6; CRPD/C/COL/CO/1, para. 5.

[37] See, for example, CRPD/C/SRB/CO/1, para. 10; CRPD/C/SVK/CO/1, para. 16; CRPD/C/14/D/21/2014, para. 8.5.

[38] See, for example, CRPD/C/BOL/CO/1, para. 14. See also CRPD/C/3, para. 7.

[39] See, for example, CRPD/C/ITA/CO/1, para. 10; CRPD/C/CHL/CO/1, para. 12.

[40] See, for example, CRPD/C/COK/CO/1, para. 10; CRPD/C/BRA/CO/1, para. 13; CRPD/C/URY/CO/1, para. 14.

[41] See, for example, CRPD/C/CZE/CO/1, para. 12; CRPD/C/SRB/CO/1, para. 10; CRPD/C/THA/CO/1, para. 14.

[42] See, for example, CRPD/C/TKM/CO/1, para. 10. See also CRPD/C/3, para. 7 (h).

[43] See, for example, CRPD/C/DEU/CO/1, para. 14; CRPD/C/QAT/CO/1, para. 12.

22. The Committee recommended that parties to the Convention take all appropriate measures, including affirmative action measures,[44] to ensure the development, empowerment and advancement of women with disabilities;[45] mainstream gender and disability in policies, programmes and strategies;[46] address multiple and intersectional discrimination in law, policies and practice;[47] ensure appropriate consultation with women and girls with disabilities in the design, implementation and evaluation of policies and programmes that affect them directly;[48] adopt a due diligence framework to ensure that laws, policies and programmes addressing violence against women are accessible and effective in preventing and redressing violence against women with disabilities;[49] and systematically collect data on the situation of women with disabilities.[50]

Children with disabilities (art. 7)

23. The Committee expressed concern about the lack of awareness about the rights of children with disabilities; the lack of involvement of children with disabilities in decisions that affect their lives; stigma, discrimination and harmful stereotypes, particularly in rural areas, affecting them; the high prevalence of institutionalization, abandonment, mistreatment, sexual abuse and exploitation of children with disabilities in some countries; the insufficient support provided to children with disabilities and their families; and the adverse impact of austerity measures on the availability of support services for families with children with disabilities.

24. The Committee recommended that parties to the Convention develop and implement a comprehensive rights-based strategy for children with disabilities;[51] raise awareness of the rights of children with disabilities;[52] ensure that children with disabilities are consulted and can freely express their views on matters that affect them;[53] implement strategies to prevent abandonment, neglect and institutionalization of children with disabilities;[54] combat stereotyping of children with disabilities within families and in society;[55] develop support services for children with disabilities and their families in local communities;[56] and mitigate the impact of austerity measures on children with disabilities.[57]

Awareness-raising (art. 8)

25. The Committee expressed concern about the lack or limited number of awareness-raising campaigns on the rights of persons with disabilities, the fact that they are not constantly carried out and are not consistent with the human rights-based approach to disability; the fact that primary prevention of disability is considered an implementation measure of the Convention; the prevalence of stigma and harmful stereotyping, particularly against women with disabilities and persons with intellectual and/or psychosocial disabilities; and the fact that privately run awareness-raising efforts, which receive public funding, reinforce the charity-based approach to disability, contrary to the Convention.

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[44] See, for example, CRPD/C/EU/CO/1, para. 21. See also CRPD/C/3, para. 8 (d).
[45] See, for example, CRPD/C/GC/3, para. 64; CRPD/C/THA/CO/1, para. 16.
[46] See, for example, CRPD/C/EU/CO/1, para. 21; CRPD/C/ETH/CO/1, para. 14.
[47] See, for example, CRPD/C/LTU/CO/1, para. 16. See also CRPD/C/3, para. 63 (a).
[48] See, for example, CRPD/C/SRB/CO/1, para. 12; CRPD/C/PRT/CO/1, para. 18.
[49] See, for example, CRPD/C/BRA/CO/1, para. 15.
[50] See, for example, CRPD/C/GC/3, para. 63 (d); CRPD/C/GTM/CO/1, para. 20.
[51] See, for example, CRPD/C/EU/CO/1, para. 23; CRPD/C/COK/CO/1, para. 14.
[52] See, for example, CRPD/C/THA/CO/1, para. 18. See also CRPD/C/3, para. 9 (d).
[53] See, for example, CRPD/C/CZE/CO/1, para. 15; CRPD/C/DEU/CO/1, para. 18. See also CRPD/C/3, para. 9 (g).
[54] See, for example, CRPD/C/3, para. 9 (b).
[55] See, for example, CRPD/C/THA/CO/1, para. 17; CRPD/C/KEN/CO/1, para. 14.
[56] See, for example, CRPD/C/LTU/CO/1, para. 20.
[57] See, for example, CRPD/C/PRT/CO/1, para. 20.

26. The Committee recommended that parties to the Convention develop and implement, together with organizations of persons with disabilities, awareness-raising campaigns targeting the general public, Governments and the private sector to foster an image of persons with disabilities as right-holders;[58] remove primary prevention of disabilities from action plans and policies aimed at implementing the Convention;[59] effectively prevent and combat stereotypes and discrimination faced by persons with disabilities;[60] and ensure that privately run awareness-raising efforts are consistent with the human rights-based approach to disability.[61]

Accessibility (art. 9)

27. The Committee expressed concern about limited progress on accessibility to buildings, transportation and information and communications technology; narrow interpretations of accessibility to pertain to the physical environment; the lack or limited implementation and monitoring of implementation of accessibility standards; the lack or limited involvement of organizations of persons with disabilities in the development of accessibility plans; the lack of recognition of Braille and sign language as official scripts; the insufficient promotion of the principle of universal design; the lack of affordable and accessible information and communications technology; the fact that accessibility standards have not been incorporated in procurement processes; and the lack of accessibility plans.

28. The Committee recommended that States parties develop, in consultation with organizations of persons with disabilities, a comprehensive national accessibility action plan with time frames, monitoring and evaluation benchmarks, which is binding on procurement processes;[62] promote the design, development, production and distribution of accessible information and communications technology and systems at an early stage, so that they become accessible at minimum cost;[63] ensure that legislation incorporates and is based on the principle of universal design and provides for the mandatory application of accessibility standards and for sanctions for those who fail to apply them;[64] provide legal recognition for sign language and Braille;[65] and broaden the policy on accessibility to better enable persons with disabilities to participate in society.[66]

Right to life (art. 10)

29. The Committee expressed concern about harmful practices threatening the life of persons with disabilities, including attacks against persons with albinism, ritual crimes, killing of newborn children with disabilities and the use of children with disabilities in trafficking of organs.

30. The Committee recommended that States parties eradicate harmful practices, including ritual killings, "mercy killings", mutilations, trafficking in organs and body parts, infanticide and intentional killings of persons with disabilities; protect the right to life of persons with disabilities on an equal basis with others;[67] and promptly investigate all cases of violence against persons with disabilities, ensuring that the perpetrators are appropriately prosecuted and punished.[68]

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[58] See, for example, CRPD/C/COK/CO/1, para. 18; CRPD/C/FJI/CO/1, para. 27.
[59] See, for example, CRPD/C/QAT/CO/1, para. 18; CRPD/C/THA/CO/1, para. 20.
[60] See, for example, CRPD/C/UGA/CO/1, para. 15; CRPD/C/ETH/CO/1, para. 18.
[61] See, for example, CRPD/C/MUS/CO/1, para. 16. See also CRPD/C/3, para. 10 (d).
[62] See, for example, CRPD/C/URY/CO/1, para. 22; CRPD/C/GAB/CO/1, para. 23.
[63] See, for example, CRPD/C/14/D/21/2014, para. 8.5. See also CRPD/C/3, para. 11 (d).
[64] See, for example, CRPD/C/14/D/21/2014, para. 9.
[65] See, for example, CRPD/C/14/D/21/2014, para. 9; CRPD/C/MNG/CO/1, para. 16.
[66] See, for example, CRPD/C/MNG/CO/1, para. 17.
[67] See, for example, CRPD/C/3, para. 12.
[68] See, for example, CRPD/C/KEN/CO/1, para. 20.

Situation of risks and humanitarian emergencies (art. 11)

31. The Committee expressed concern about the lack or limited involvement of persons with disabilities in disaster risk reduction and humanitarian emergency strategies; the lack or insufficient accessibility of such strategies and protocols for persons with disabilities, particularly deaf, deaf-blind and hard-of-hearing persons; the situation of migrants, refugees, asylum seekers and internally displaced persons with disabilities; the fact that women with disabilities are disproportionately affected in disasters and humanitarian emergencies; the lack of a disability-rights perspective in victim assistance programmes for victims of anti-personnel mines; and the lack of or insufficient awareness-raising programmes on persons with disabilities for staff involved in disaster and humanitarian relief efforts.

32. The Committee recommended that parties to the Convention adopt disaster risk reduction and humanitarian emergency strategies or protocols that are accessible and inclusive of persons with disabilities, particularly deaf persons, and that are developed and implemented in close consultation with their representative organizations;[69] mainstream disability in migration and refugee policies;[70] and in victim assistance programmes;[71] and regularly train rescue and emergency personnel and humanitarian actors on the human rights-based approach to disability.[72]

Equal recognition before the law (art. 12)

33. The Committee expressed concern about legal regimes that continue to deprive or restrict the legal capacity of persons with disabilities in many areas of life; the lack of or insufficient support provided to persons with disabilities to exercise their legal capacity, particularly in emergency and crisis situations; the fact that women with disabilities are more likely to be deprived of their legal capacity; the fact that persons with disabilities continue to be denied their legal capacity on the basis of a third party's analysis of their "best interest"; and that deprivation of legal capacity often results in involuntary institutionalization.

34. The Committee recommended that States parties abolish in law and in practice the deprivation of legal capacity on the basis of impairment, and introduce supported decision-making schemes;[73] ensure that persons with disabilities have access to individualized support that fully respects their autonomy, will and preferences, and that it is provided on the basis of the free and informed consent of the person concerned and, when applicable, with due recourse to the "best interpretation of will and preferences" test, in line with the Committee's general comment No. 1 (2014) on equal recognition before the law.[74]

Access to justice (art. 13)

35. The Committee expressed concern about the lack of procedural, gender and age-appropriate accommodation in judicial procedures for persons with disabilities, including the provision of sign language interpretation and other accessible formats and modes of communication; the lack of accessibility of the judicial system; the lack of legal assistance; the restrictions on the validity of evidence of persons with disabilities; and the lack of protection of persons with disabilities, particularly women with disabilities who are victims of violence.

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[69] See, for example, CRPD/C/DOM/CO/1, para. 19; CRPD/C/ARE/CO/1, para. 22.
[70] See, for example, CRPD/C/EU/CO/1, para. 35.
[71] See, for example, CRPD/C/COL/CO/1, para. 29.
[72] See, for example, CRPD/C/3, para. 13 (f).
[73] See, for example, CRPD/C/BRA/CO/1, para. 25; CRPD/C/SRB/CO/1, para. 22; CRPD/C/16/D/7/2012, para. 8.5.
[74] See, for example, CRPD/C/3, para. 14 (f).

36. The Committee recommended that States parties ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations;[75] and effective training of personnel in the justice and penitentiary system on the human rights-based approach to disability.[76]

Liberty and security of the person (art. 14)

37. The Committee compiled its jurisprudence on article 14 of the Convention in the guidelines on the right to liberty and security of persons with disabilities, which were adopted by the Committee at its fourteenth session. The guidelines are contained in the annex to the present report.

Freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15)

38. The Committee continued expressing concern about poor living conditions in institutions where persons with disability still live; about involuntary treatment, including forced sterilization and surgical castration; the use of physical, chemical or mechanical restraints, solitary confinement, corporal punishment, the practice of electroconvulsive therapy, the excessive use of force, and the fact that persons with disabilities are subjected to medical experimentation; and the lack of ethical guidelines to ensure that persons with disabilities involved in research are enabled to provide their informed consent.

39. The Committee recommended that States parties prohibit all practices that may amount to torture or cruel, inhuman or degrading treatment;[77] ensure that medical research, experimentation and treatment are carried out with the free, prior and fully informed consent of persons with disabilities;[78] effectively prevent the occurrence of practices that could amount to torture or cruel, inhuman or degrading treatment, including through the establishment of national monitoring mechanisms for the prevention of torture;[79] and investigate, prosecute and sanction perpetrators.[80]

Freedom from exploitation, violence and abuse (art. 16)

40. The Committee expressed concern about violence against women with disabilities, including sexual violence; violence against children with disabilities, including those exposed to begging, bullying, corporal punishment and trafficking; violence against persons with disabilities still living in institutions, including in non-government-run settings; and violence inflicted on persons with disabilities as a result of armed conflict.

41. The Committee recommended that parties to the Convention mainstream disability in policies for the prevention and protection of violence, abuse and exploitation;[81] provide redress and support to persons with disabilities affected by violence, including through accessible helplines and shelters;[82] collect disaggregated data on cases of violence against persons with disabilities;[83] establish a due diligence framework to combat impunity concerning violence, abuse or exploitation,[84] investigate, prosecute and punish perpetrators

[75] See, for example, CRPD/C/16/D/7/2012, para. 8.5.
[76] See, for example, CRPD/C/CZE/CO/1, para. 25; CRPD/C/ITA/CO/1, para. 30.
[77] See, for example, CRPD/C/HRV/CO/1, para. 24; CRPD/C/THA/CO/1, para. 32.
[78] See, for example, CRPD/C/3, para. 17 (b).
[79] See, for example, CRPD/C/CHL/CO/1, para. 38.
[80] See, for example, CRPD/C/3, para. 17 (d) and (e).
[81] See, for example, CRPD/C/KEN/CO/1, para. 32; CRPD/C/EU/CO/1, para. 45.
[82] See, for example, CRPD/C/TKM/CO/1, para. 30; CRPD/C/MUS/CO/1, para. 28.
[83] See, for example, CRPD/C/ITA/CO/1, para. 44.
[84] See, for example, CRPD/C/UGA/CO/1, para. 31; CRPD/C/URY/CO/1, para. 40.

of such acts,[85] and set up a monitoring mechanism in accordance with article 16 (3) of the Convention.[86]

Integrity of the person (art. 17)

42. The Committee expressed concern about forced sterilization, forced abortion and coercive sexual and reproductive health procedures; forced medical treatment, particularly affecting persons with psychosocial disabilities; forced surgery on intersex children; harmful traditional practices, including genital mutilation, affecting women with disabilities; and violence against persons with disabilities who are exercising their right to peaceful assembly.

43. The Committee recommended that parties to the Convention repeal laws permitting forced sterilization and forced abortion;[87] prohibit medical treatment without the free and informed consent of the person concerned;[88] and train professionals, particularly medical personnel, on the rights of persons with disabilities.[89]

Liberty of movement and nationality (art. 18)

44. The Committee expressed concern about legal restrictions on the acquisition of nationality and on entry into a country; inequalities in access to social services and support to migrants with disabilities; the lack of portability of social allowances for persons with disabilities in regional integration organizations; and the lack of or insufficient birth registration of children with disabilities, particularly in rural areas.

45. The Committee recommended that States parties ensure that persons with disabilities can exercise their right to acquire or change a nationality on an equal basis with others;[90] ensure equal treatment of persons with disabilities in migration and asylum procedures;[91] and ensure that children with disabilities are registered immediately at birth and provided with identity documents.[92]

Living independently and being included in the community (art. 19)

46. The Committee expressed concern about the persistent institutionalization of persons with disabilities, including by dint of budget allocations; and the lack of or insufficient support services, including personal assistance, for persons with disabilities in their communities.

47. The Committee recommended that States parties establish, in close consultation with organizations of persons with disabilities, national strategies and frameworks, with clear time frames, budget allocations, indicators and benchmarks to promote independent living schemes that respect the autonomy, self-determination and freedom of choice of persons with disabilities and ensure that accessible and inclusive support services, including personal assistance, are provided in local communities.[93]

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[85] See, for example, CRPD/C/3, para. 18 (d).
[86] See, for example, CRPD/C/HRV/CO/1, para. 26; CRPD/C/DEU/CO/1, para. 36.
[87] See, for example, CRPD/C/EU/CO/1, para. 47; CRPD/C/LTU/CO/1, para. 38.
[88] See, for example, CRPD/C/MUS/CO/1, para. 30; CRPD/C/PRT/CO/1, para. 37.
[89] See, for example, CRPD/C/BRA/CO/1, para. 35; CRPD/C/HRV/CO/1, para. 27.
[90] See, for example, CRPD/C/3, para. 20 (a).
[91] See, for example, CRPD/C/3, para. 20 (b).
[92] See, for example, CRPD/C/ETH/CO/1, para. 42; CRPD/C/GTM/CO/1, para. 52.
[93] See, for example, CRPD/C/15/R.2, paras. 8 and 10-11. See also CRPD/C/3, para. 21 (a), (b), (h), (i) and (j).

Personal mobility (art. 20)

48. The Committee expressed concern about the insufficient availability of assistive devices and about their affordability and lack of quality.

49. The Committee recommended that States parties ensure the provision of affordable and high-quality mobility and assistive devices for persons with disabilities.[94]

Freedom of expression (art. 21)

50. The Committee expressed concern about the lack of, or limited access of persons with disabilities to, accessible public and/or private broadcasting, websites, digital information and information and communications technology; the lack or limited availability of public information in Braille, sign language, easy-read and other augmentative and alternative means and modes of communication; and the lack of recognition of sign language as an official language.

51. The Committee recommended that States parties ensure that persons with disabilities can exercise their freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others,[95] by providing access to all public information, websites and broadcasting and to information and communications technology through Braille, sign language, easy-read formats, captioning, audio-description and other augmentative or alternative means and modes of communication.[96]

Respect for privacy (art. 22)

52. The Committee recommended that States parties ensure the protection of personal data of persons with disabilities from unlawful and arbitrary interference, including health records.[97]

Respect for home and the family (art. 23)

53. The Committee expressed concern about laws and practices that restrict the right to marry of persons with disabilities, their parental rights, the right to adopt, their sexual and reproductive rights and their right to found and have a family.

54. The Committee recommended that States parties adopt measures to ensure that persons with disabilities can exercise their rights relating to marriage, family, parenthood and relationships, and their sexual and reproductive rights, on an equal basis with others and on the basis of their free and informed consent.[98]

Education (art. 24)

55. The Committee expressed concern about the lack of or insufficient transition to an inclusive and quality education system; the lack of recognition of the right to inclusive education in legislation; the exclusion of persons with disabilities from mainstream educational systems on the basis of impairment; the limited availability of accessible, affordable educational settings, materials and textbooks; the lack of provision of reasonable accommodation and support to learners with disabilities; the high levels of illiteracy among

[94] See, for example, CRPD/C/SRB/CO/1, para. 42; CRPD/C/SVK/CO/1, para. 60.
[95] See, for example, CRPD/C/15/D/11/2013, para. 8.8; CRPD/C/15/D/13/2013, para. 8.8.
[96] See, for example CRPD/C/BRA/CO/1, para. 39; CRPD/C/GAB/CO/1, para. 49.
[97] See, for example, CRPD/C/UGA/CO/1, para. 45. See also CRPD/C/3, para. 24.
[98] See, for example, CRPD/C/3, para. 25 (a).

persons with disabilities; and the limited access of persons with disabilities to vocational training and tertiary education.

56. The Committee adopted general comment No. 4 (2016) on the right to inclusive education in order to address those challenges and provide further guidance to States parties.

Health (art. 25)

57. The Committee expressed concern about the lack of accessibility of mainstream health services, particularly in rural areas; the stigma and discrimination faced by persons with disabilities in accessing health-care services; the high occurrence of forced treatment of persons with disabilities; and the fact that persons with disabilities are discriminated against in accessing insurance schemes.

58. The Committee recommended that States parties ensure that health-care services are accessible to all persons with disabilities without discrimination on the basis of disability;[99] ensure that those services are gender and age-sensitive;[100] ensure that all medical services and treatment are provided on the basis of the free, prior and informed consent of the person;[101] combat stereotyping;[102] and ensure that persons with disabilities are not discriminated against in accessing insurance schemes.[103]

Habilitation and rehabilitation (art. 26)

59. The Committee expressed concern about the lack of community-based habilitation and rehabilitation services, and limited access to those services, particularly in rural areas; low quality services; the fact that a medical-oriented approach is still prevalent; the lack of or the limited involvement of organizations of persons with disabilities in the design of habilitation and rehabilitation programmes, and the limited oversight of rehabilitation programmes run by the private sector.

60. The Committee recommended that States parties develop comprehensive cross-sectoral and accessible habilitation and rehabilitation programmes,[104] with the involvement of organizations of persons with disabilities;[105] ensure that they are human rights-based, and monitor those offered by the private sector.[106]

Work and employment (art. 27)

61. The Committee expressed concern about the large proportion of persons with disabilities who are unemployed or have low-income employment; the lack of provision of reasonable accommodation in the workplace; the lack of affirmative action measures to promote employment; the non-enforcement of quota systems both in the public and private sector; and prevailing discrimination in the workplace.

62. The Committee recommended that States parties step up their efforts to promote the employment of persons with disabilities in the open labour market,[107] including through

[99] See, for example, CRPD/C/CHL/CO/1, para. 52; CRPD/C/THA/CO/1, para. 48.
[100] See, for example, CRPD/C/UKR/CO/1, para. 47. See also CRPD/C/3, para. 27 (e).
[101] See, for example, CRPD/C/ITA/CO/1, para. 61; CRPD/C/GTM/CO/1, para. 62.
[102] See, for example, CRPD/C/ITA/CO/1, para. 62.
[103] See, for example, CRPD/C/THA/CO/1, para. 49.
[104] See, for example, CRPD/C/QAT/CO/1, para. 48; CRPD/C/BOL/CO/1, para. 60.
[105] See, for example, CRPD/C/CHL/CO/1, para. 56; CRPD/C/ETH/CO/1, para. 58.
[106] See, for example, CRPD/C/COL/CO/1, para. 59.
[107] See, for example, CRPD/C/DOM/CO/1, para. 51.

affirmative action measures; provide reasonable accommodation and ensure that persons with disabilities are not discriminated against in any matters concerning employment.[108]

Adequate standard of living (art. 28)

63. The Committee expressed concern about the large proportion of persons with disabilities living in poverty, including those who have been disproportionally affected by austerity measures; the insufficient social protection in areas such as housing, health, employment and independent living; and the lack of adequate support to offset disability-related costs.

64. The Committee recommended that parties to the Convention ensure that persons with disabilities are included in poverty reduction strategies;[109] ensure an adequate standard of living and social protection for persons with disabilities, including through social protection floors and measures to mitigate against the adverse impacts of austerity measures;[110] and ensure that social protection schemes cover the additional costs incurred as a result of disability.[111]

Participation in political and public life (art. 29)

65. The Committee expressed concern about laws and practices preventing persons with disabilities, particularly those with intellectual and/or psychosocial disabilities, from exercising their right to vote and to stand for election; the lack of accessibility of electoral processes; the lack of support to promote the participation of persons with disabilities in public life; and the low percentage of persons with disabilities holding public positions.

66. The Committee recommended that States parties abolish laws and practices that prevent persons with disabilities from exercising their right to vote and to stand for election;[112] make electoral processes fully accessible for persons with disabilities;[113] and step up efforts to include persons with disabilities in positions of elected representation and public office.[114]

Participation in cultural life (art. 30)

67. The Committee expressed concern about the lack of or insufficient accessibility to libraries, sports, tourism and cultural life, which prevent persons with disabilities from participating in cultural life on an equal basis with others.

68. The Committee recommended that States parties step up efforts to ensure the accessibility of libraries, tourist sites, historical monuments, mainstream cultural facilities and sports activities.[115] It also recommended that States parties accede to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.[116]

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[108] See, for example, CRPD/C/15/R.2, para. 20; CRPD/C/GAB/CO/1, para. 59.
[109] See, for example, CRPD/C/COL/CO/1, para. 63.
[110] See, for example, CRPD/C/EU/CO/1, para. 66.
[111] See, for example, CRPD/C/HRV/CO/1, para. 44; CRPD/C/URY/CO/1, para. 60.
[112] See, for example, CRPD/C/COK/CO/1, para. 52.
[113] See, for example, CRPD/C/BRA/CO/1, para. 53; CRPD/C/PRT/CO/1, para. 56.
[114] See, for example, CRPD/C/SRB/CO/1, para. 60.
[115] See, for example, CRPD/C/BOL/CO/1, para. 68.
[116] See, for example, CRPD/C/CZE/CO/1, para. 59.

Data collection (art. 31)

69. The Committee recommended that parties to the Convention accurately reflect persons with disabilities in censuses and household surveys;[117] systematically collect disaggregated data on persons with disabilities;[118] and incorporate human rights-based indicators in data collection and analysis in cooperation with persons with disabilities.[119]

International cooperation (art. 32)

70. The Committee recommended that States parties ensure that all international development cooperation programmes and projects are fully inclusive and accessible for persons with disabilities at all stages;[120] ensure that persons with disabilities are meaningfully involved in the design, implementation and monitoring of those projects;[121] and establish a monitoring and accountability framework to assess their impact on persons with disabilities.

National implementation and monitoring (art. 33)

71. The Committee recommended that States parties formally implement the designation of focal points in the different areas of the Convention;[122] consider establishing an inter-institutional coordination mechanism for the implementation of the Convention;[123] set up an independent monitoring framework with an allocated budget;[124] and ensure the participation of persons with disabilities in the national implementation and monitoring processes.[125]

72. The Committee adopted guidelines on independent monitoring frameworks and their participation in the work of the Committee (see CRPD/C/1/Rev.1, annex).

Sustainable Development Goals

73. The Committee called upon States parties to take into consideration the Convention in their efforts to implement the 2030 Agenda for Sustainable Development and the Sustainable Development Goals, particularly in relation to articles 5 (equality and non-discrimination); 9 (accessibility); 24 (education); 27 (work and employment); 28 (adequate standard of living and social protection); 31 (statistics and data collection); and 32 (international cooperation).

74. The Committee recommended that States parties mainstream the rights of persons with disabilities in the national implementation and monitoring of the 2030 Agenda and the Sustainable Development Goals, in close cooperation with organizations of persons with disabilities.[126]

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[117] See, for example, CRPD/C/BRA/CO/1, para. 57.
[118] See, for example, CRPD/C/DEU/CO/1, para. 57; CRPD/C/MUS/CO/1, para. 44.
[119] See, for example, CRPD/C/EU/CO/1, para. 73.
[120] See, for example, CRPD/C/QAT/CO/1, para. 58.
[121] See, for example, CRPD/C/SVK/CO/1, para. 86; CRPD/C/ARE/CO/1, para. 60.
[122] See, for example, CRPD/C/DEU/CO/1, para. 62.
[123] See, for example, CRPD/C/KEN/CO/1, para. 60.
[124] See, for example, CRPD/C/COK/CO/1, para. 62; CRPD/C/TKM/CO/1, para. 45.
[125] See, for example, CRPD/C/HRV/CO/1, para. 53.
[126] See, for example, CRPD/C/LTU/CO/1, para. 64; CRPD/C/CHL/CO/1, para. 66.

VI. Cooperation with relevant bodies

A. Cooperation with other United Nations organs and departments

75. The Committee continued its interaction with other human rights treaty bodies and with United Nations agencies and programmes, particularly concerning the inclusion of a disability rights approach in the 2030 Agenda for Sustainable Development. The Committee decided to invite the Chair of the Inter-Agency Support Group on the Convention on the Rights of Persons with Disabilities to interact with it on a regular basis. It also held regular meetings with the Special Rapporteur on the rights of persons with disabilities.

B. Cooperation with other relevant bodies

76. The Committee continued to engage with national human rights institutions, independent monitoring mechanisms and regional organizations during the reporting period.

77. The Committee continued to attach great importance to the participation of organizations of persons with disabilities and civil society organizations in its activities.

78. Along with the Special Rapporteur on the rights of persons with disabilities and the Special Envoy of the Secretary-General on Disability and Accessibility, the Committee organized and participated in several events to commemorate the tenth anniversary of the adoption of the Convention.

VII. Conference of States Parties to the Convention

79. The Committee was officially represented by its Chair and one of its Vice-Chairs at the eighth and ninth sessions of the Conference of States Parties to the Convention, held in New York, in 2015 and 2016 respectively.

Annex

Guidelines on the right to liberty and security of persons with disabilities*

A. Introduction

1. Since the Committee on the Rights of Persons with Disabilities adopted a statement on article 14 of the Convention on the Rights of Persons with Disabilities in September 2014 (see CRPD/C/12/2, annex IV), some United Nations bodies and intergovernmental processes have developed guidelines on the right to liberty and security of the person and on the treatment of prisoners that make reference to the deprivation of liberty of persons with disabilities. Some regional bodies have also considered adopting additional binding instruments that would allow for involuntary internment and forced treatment of persons with intellectual and psychosocial disabilities. The Committee, for its part, has further developed its understanding of article 14 while engaging in constructive dialogue with several States parties to the Convention.

2. The Committee, as the international body responsible for monitoring implementation of the Convention, has adopted the present guidelines to provide further clarification to States parties, regional integration organizations, national human rights institutions and national monitoring mechanisms, organizations of persons with disabilities and civil society organizations, as well as United Nations agencies, bodies and independent experts, about the obligation of States parties pursuant to the Convention to respect, protect and guarantee the right of persons with disabilities to liberty and security. The present guidelines replace the statement adopted by the Committee on article 14 of the Convention.

B. The right to liberty and security of persons with disabilities

3. The Committee reaffirms that liberty and security of the person is one of the most precious rights to which everyone is entitled. In particular, all persons with disabilities, especially persons with intellectual disabilities and psychosocial disabilities, are entitled to liberty pursuant to article 14 of the Convention.

4. Article 14 of the Convention is, in essence, a non-discrimination provision. It specifies the scope of the right to liberty and security of the person in relation to persons with disabilities, prohibiting all discrimination based on disability in the exercise of that right. Article 14 thus relates directly to the purpose of the Convention, which is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

5. The non-discriminatory nature of article 14 provides evidence of the close interrelation with the right to equality and non-discrimination (art. 5). In article 5 (1), States parties recognize that all persons are equal before and under the law and are entitled to the equal protection of the law. Article 5 (2) provides that States parties shall prohibit all forms of discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

C. The absolute prohibition of detention on the basis of impairment

6. There are still practices in which States parties allow for the deprivation of liberty on the grounds of actual or perceived impairment. Impairment in the present guidelines is understood as a physical, psychosocial, intellectual or sensory personal condition that may or may not come with functional limitations of the body, mind or senses. Impairment

* Adopted by the Committee at its fourteenth session (17 August-4 September 2015).

differs from what is usually considered the norm. Disability is understood as the social effect of the interaction between individual impairment and the social and material environment, as described in article 1 of the Convention. The Committee has established that article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived impairment. However, the legislation of several States parties, including mental health laws, still provide for instances in which persons may be detained on the grounds of their actual or perceived impairment, provided there are other reasons for their detention, including that they are deemed dangerous to themselves or others. That practice is incompatible with article 14; it is discriminatory in nature and amounts to arbitrary deprivation of liberty.

7. During the negotiations of the Ad Hoc Committee on Disability leading up to the adoption of the Convention, there were extensive discussions on the need to include in the draft text of article 14 (1) (b) a qualifier, such as "solely" or "exclusively", in the prohibition of deprivation of liberty owing to the existence of an actual or perceived impairment. States opposed the inclusion, arguing that it could lead to misinterpretation[a] and could allow deprivation of liberty on the basis of actual or perceived impairment in conjunction with other criteria, such as posing a danger to oneself or to others.[b] Furthermore, discussions were held on whether to include a provision concerning the periodic review of deprivation of liberty in the text of draft article 14 (2).[c] Civil society opposed the use of qualifiers and the inclusion of a provision concerning periodic review.[d] Consequently, article 14 (1) (b) prohibits the deprivation of liberty on the basis of actual or perceived impairment even if additional factors or criteria are also used to justify the deprivation of liberty. The issue was settled in the seventh meeting of the Ad Hoc Committee.[e]

8. The absolute ban on deprivation of liberty on the basis of actual or perceived impairment has strong links with article 12 of the Convention, on equal recognition before the law. In its general comment No. 1 (2014) on equal recognition before the law, the Committee has clarified that States parties should refrain from the denial of the legal capacity of persons with disabilities and their detention in institutions against their will, either without the free and informed consent of the persons concerned or with the consent of a substitute decision maker, as that practice constitutes arbitrary deprivation of liberty and violates articles 12 and 14 of the Convention (para. 40).

9. Enjoyment of the right to liberty and security of the person is central to the implementation of article 19 on the right to live independently and be included in the community. The Committee has stressed the relationship with article 19. It has expressed concern about the institutionalization of persons with disabilities and the lack of support services in the community, and has recommended implementing support services and effective deinstitutionalization strategies in consultation with organizations of persons with disabilities.[f] In addition, it has called for the allocation of more financial resources to ensure sufficient community-based services.[g]

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[a] See daily summary of discussion at the third session of the Ad Hoc Committee, 26 May 2004, vol. 4, No. 3. Available from www.un.org/esa/socdev/enable/rights/ahc3sum10.htm. See also daily summary of discussion at the fifth session of the Ad Hoc Committee, 26 January 2005, vol. 6, No. 3. Available from www.un.org/esa/socdev/enable/rights/ahc5sum26jan.htm.

[b] See daily summary of discussion at the fifth session of the Ad Hoc Committee, 26 January 2005.

[c] Originally, the provision was in art. 10 (2) (c) (ii) of the draft convention.

[d] See daily summary of discussion at the fifth session, 27 January 2005, vol. 6, No. 4. Available from www.un.org/esa/socdev/enable/rights/ahc5sum27jan.htm. See also daily summary of discussion at the third session of the Ad Hoc Committee, 26 May 2004, vol. 4, No. 3.

[e] See daily summary of discussion at the seventh session, 18 January 2006, vol. 8, No. 3. Available from www.un.org/esa/socdev/enable/rights/ahc7sum18jan.htm. See also daily summary of discussion at the seventh session, 19 January 2006, vol. 8, No. 4. Available from www.un.org/esa/socdev/enable/rights/ahc7sum19jan.htm.

[f] See CRPD/C/ESP/CO/1, paras. 35-36; CRPD/C/CHN/CO/1 and Corr.1, paras. 25-26; CRPD/C/ARG/CO/1, paras. 23-24; CRPD/C/PRY/CO/1, paras. 35-36; CRPD/C/AUT/CO/1, paras.

D. Involuntary or non-consensual commitment in mental health institutions

10. Involuntary commitment of persons with disabilities on health-care grounds contradicts the absolute ban on deprivation of liberty on the basis of impairment (art. 14 (1) (b)) and the principle of free and informed consent of the person concerned for health care (art. 25). The Committee has repeatedly stated that States parties should repeal provisions that allow for the involuntary commitment of persons with disabilities in mental health institutions based on actual or perceived impairment.[h] Involuntary commitment in mental health facilities carries with it the denial of the person's legal capacity to decide about care, treatment and admission to a hospital or institution, and therefore violates article 12 in conjunction with article 14.

E. Non-consensual treatment during deprivation of liberty

11. The Committee has emphasized that States parties should ensure that the provision of health services, including mental health services, is based on the free and informed consent of the person concerned.[i] In its general comment No. 1, the Committee stated that States parties have an obligation to require all health and medical professionals (including psychiatric professionals) to obtain the free and informed consent of persons with disabilities prior to any treatment. The Committee stated that, in conjunction with the right to legal capacity on an equal basis with others, States parties have an obligation not to permit substitute decision makers to provide consent on behalf of persons with disabilities. All health and medical personnel should ensure appropriate consultation that directly engages the person with disabilities. They should also ensure, to the best of their ability, that assistants or support persons do not substitute or have undue influence over the decisions of persons with disabilities (para. 41).

F. Protection of persons with disabilities who are deprived of their liberty from violence, abuse and ill-treatment

12. The Committee has called upon States parties to protect the security and personal integrity of persons with disabilities who are deprived of their liberty, including by eliminating the use of forced treatment,[j] seclusion and various methods of restraint in medical facilities, including physical, chemical and mechanical restraints.[k] The Committee has found that those practices are not consistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment of persons with disabilities, pursuant to article 15 of the Convention.

G. Deprivation of liberty on the basis of perceived danger allegedly posed by persons with disabilities, alleged need for care or treatment, or any other reasons

13. Throughout all the reviews of State party reports, the Committee has established that it is contrary to article 14 to allow for the detention of persons with disabilities based on the

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29-30; CRPD/C/SWE/CO/1, paras. 35-36; CRPD/C/CRI/CO/1, paras. 29-30; CRPD/C/AZE/CO/1, paras. 28-29; CRPD/C/ECU/CO/1, paras. 28-29; CRPD/C/MEX/CO/1, paras. 29-30.

[g] See CRPD/C/CHN/CO/1 and Corr.1, para. 26; CRPD/C/AUT/CO/1, para. 31; CRPD/C/SWE/CO/1, para. 36.

[h] See CRPD/C/KOR/CO/1, para. 29; CRPD/C/DOM/CO/1, para. 27; CRPD/C/AUT/CO/1, para. 30.

[i] See CRPD/C/ECU/CO/1, para. 29 (d); CRPD/C/NZL/CO/1, para. 30; CRPD/C/SWE/CO/1, para. 36.

[j] See CRPD/C/PER/CO/1, paras. 30-31; CRPD/C/HRV/CO/1, para. 24; CRPD/C/TKM/CO/, para. 32; CRPD/C/DOM/CO/1, para. 31; CRPD/C/SVK/CO/1, paras. 33-34; CRPD/C/SWE/CO/1, paras. 37-38.

[k] See CRPD/C/NZL/1, para. 32; CRPD/C/AUS/CO/1, para. 36.

perceived danger they allegedly pose to themselves or to others. The involuntary detention of persons with disabilities based on risk or danger, alleged need for care or treatment or other reasons relating to impairment or health diagnosis, such as severity of impairment, or for the purpose of observation, is contrary to the right to liberty, and amounts to arbitrary deprivation of liberty.

14. Persons with intellectual or psychosocial impairments are frequently considered dangerous to themselves and to others when they do not consent to or resist medical or therapeutic treatment. All persons, including those with disabilities, have a duty to do no harm. Legal systems based on the rule of law have criminal and other laws in place to deal with breaches of that obligation. Persons with disabilities are frequently denied equal protection under those laws by being diverted to a separate track of law, including through mental health laws. Those laws and procedures commonly have a lower standard when it comes to human rights protection, particularly the right to due process and fair trial, and are incompatible with article 13, in conjunction with article 14, of the Convention.

15. The freedom to make one's own choices, established as a principle in article 3 (a) of the Convention, includes the freedom to take risks and make mistakes on an equal basis with others. In its general comment No. 1, the Committee stated that decisions about medical and psychiatric treatment must be based on the free and informed consent of the person concerned and must respect the person's autonomy, will and preferences (paras. 21 and 42). Deprivation of liberty on the basis of actual or perceived impairment or health conditions in mental health institutions, which deprives persons with disabilities of their legal capacity, also amounts to a violation of article 12 of the Convention.

H. Detention of persons who are unfit to stand trial in criminal justice systems or incapable of criminal liability

16. The Committee has established that declarations of unfitness to stand trial or incapacity to be found criminally responsible in criminal justice systems and the detention of persons based on those declarations are contrary to article 14 of the Convention, since they deprive the person of his or her right to due process and safeguards that are applicable to every defendant. The Committee has called for States parties to remove those declarations from the criminal justice system. It has recommended that all persons with disabilities who have been accused of crimes and detained in jails and institutions without trial be allowed to defend themselves against criminal charges, and be provided with the support and accommodation required to facilitate their effective participation,[l] as well as procedural accommodations to ensure fair trial and due process.[m]

I. Conditions of detention of persons with disabilities

17. The Committee has expressed its concern about the poor living conditions in places of detention, particularly prisons, and has recommended that States parties ensure that places of detention are accessible and provide humane living conditions. It has recommended that immediate steps be taken to address the poor living conditions in institutions.[n] It has also recommended that States parties establish legal frameworks for the provision of reasonable accommodation that preserve the dignity of persons with disabilities, and that they guarantee that right for those detained in prisons.[o] In addition, it

[l] See CRPD/C/AUS/CO/1, para. 30.

[m] See CRPD/C/MNG/CO/1, para. 25; CRPD/C/DOM/CO/1, para. 29 (a); CRPD/C/CZE/CO/1, para. 28; CRPD/C/HRV/CO/1, para. 22; CRPD/C/DEU/CO/1, para. 32; CRPD/C/DNK/CO/1, paras. 34-35; CRPD/C/ECU/CO/1, para. 29 (b); CRPD/C/KOR/CO/1, para. 28; CRPD/C/MEX/CO/1, para. 27; CRPD/C/NZL/CO/1, para. 34.

[n] See CRPD/C/HRV/CO/1, para. 24.

[o] See CRPD/C/COK/CO/1, para. 28 (b); CRPD/C/MNG/CO/1, para. 25; CRPD/C/TKM/CO/1 para. 26 (b); CRPD/C/CZE/CO/1, para. 28; CRPD/C/DEU/CO/1, para. 32 (c); CRPD/C/KOR/CO/1, para. 29;

has addressed the need to promote training mechanisms for justice and prison officials in accordance with the Convention's legal paradigm.[p]

18. While developing its jurisprudence under the Optional Protocol to the Convention,[q] the Committee has affirmed that, under article 14 (2) of the Convention, persons with disabilities deprived of their liberty have the right to be treated in compliance with the objectives and principles of the Convention, including conditions of accessibility and reasonable accommodation. The Committee has recalled that States parties must take all relevant measures to ensure that persons with disabilities who are detained can live independently and participate fully in all aspects of daily life in their place of detention, including ensuring their access, on an equal basis with others, to the various areas and services, such as bathrooms, yards, libraries, study areas, workshops and medical, psychological, social and legal services. The Committee has stressed that a lack of accessibility and reasonable accommodation places persons with disabilities in substandard conditions of detention that are incompatible with article 17 of the Convention and may constitute a breach of article 15 (2).

J. Monitoring of detention facilities and review of detentions

19. The Committee has stressed the need to implement monitoring and review mechanisms in relation to persons with disabilities who are deprived of their liberty. Monitoring existing institutions and review of detentions do not entail the acceptance of the practice of forced institutionalization. Article 16 (3) of the Convention explicitly requires monitoring of all facilities and programmes that serve persons with disabilities in order to prevent all forms of exploitation, violence and abuse. Article 33 requires that States parties establish a national independent monitoring mechanism and ensure civil society participation in monitoring (paras. 2 and 3). Review of detentions must have the purpose of challenging arbitrary detentions and obtaining the immediate release of persons found to have been arbitrarily detrained; under no circumstances should it allow for the extension of arbitrary detention.[r]

K. Security measures

20. The Committee has addressed security measures imposed on persons who are found not criminally responsible owing to "insanity" or incapacity. It has recommended eliminating security measures,[s] including those that involve forced medical and psychiatric treatment in institutions.[t] It has expressed concern about security measures that involve indefinite deprivation of liberty and absence of regular guarantees in the criminal justice system.[u]

L. Diversion mechanisms and restorative justice schemes

21. The Committee has stated that deprivation of liberty in criminal proceedings should apply only as a matter of last resort and when other diversion programmes, including restorative justice, are insufficient to deter future crime.[v] Diversion programmes must not involve a transfer to mental health commitment regimes or require an individual to

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CRPD/C/NZL/CO/1, para. 34; CRPD/C/AZE/CO/1, para. 31; CRPD/C/AUS/CO/1, para. 32 (b); CRPD/C/SVK/CO/1, para. 32.

[p] See CRPD/C/MEX/CO/1, para. 28.

[q] See CRPD/C/11/D/8/2012.

[r] See CRPD/C/KOR/CO/1, para. 26.

[s] See CRPD/C/BEL/CO/1, para. 28.

[t] See CRPD/C/ECU/CO/1, para. 29 (c).

[u] See CRPD/C/DEU/CO/1, para. 31.

[v] See CRPD/C/NZL/CO/1, para. 34.

participate in mental health services; such services should be provided on the basis of the individual's free and informed consent."

M. Free and informed consent in emergency and crisis situations

22. In its general comment No. 1, the Committee stated that States parties must respect and support the legal capacity of persons with disabilities to make decisions at all times, including in emergency and crisis situations. States parties must ensure that support is provided to persons with disabilities, including in emergency and crisis situations, and that accurate and accessible information is provided about service options and that non-medical approaches are made available (para. 42). The Committee also stated that States parties must abolish policies and legislative provisions that allow or perpetrate forced treatment, and ensure that decisions relating to a person's physical or mental integrity can be taken only with the free and informed consent of the persons concerned (para. 42). It also stated that, in conjunction with the right to legal capacity on an equal basis with others, States parties have an obligation not to permit substitute decision makers to provide consent on behalf of persons with disabilities (para. 41).

23. In that general comment, the Committee also called for States parties to ensure that persons with disabilities are not denied the right to exercise their legal capacity on the basis of a third party's analysis of their "best interests", and that when after significant efforts have been made it is impracticable to determine a person's will and preferences, practices associated with "best interests" determinations should be replaced by the standard of "best interpretation of the will and preferences" of the person (para. 21).

N. Access to justice, reparation and redress for persons with disabilities deprived of their liberty in infringement of article 14, read alone and in conjunction with articles 12 and/or 15 of the Convention

24. Persons with disabilities who are arbitrarily or unlawfully deprived of their liberty are entitled to have access to justice to review the lawfulness of their detention, and to obtain appropriate redress and reparation. In that regard, the Committee draws States parties' attention to guideline 20 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, adopted by the Working Group on Arbitrary Detention, which contains specific measures concerning persons with disabilities (see A/HRC/30/37, para. 107).

[xi] See CRPD/C/AUS/CO/1, para. 29.